UNITED STATES BANKRUPTCY COURT

DISTRICT OF PUERTO RICO

In Re:	)	Docket No. 3:17-BK-3283(LTS)
	)	
	)	Title III
The Financial Oversight and Management Board for Puerto Rico,	)	
	)	(Jointly Administered)
as representative of	)	
The Commonwealth of Puerto Rico, *et al.*,	)	November 7, 2018
Debtors.	)	

In Re:	)	Docket No. 3:17-BK-4780(LTS)
	)	
	)	(Jointly Administered)
The Financial Oversight and Management Board for Puerto Rico,	)	
as representative of	)	
Puerto Rico Electric Power Authority,	)	
Debtor.	)	

In Re:	) Docket No. 3:17-BK-3567(LTS)
	)
	) (Jointly Administered)
The Financial Oversight and Management Board for Puerto Rico,	)
	)
as representative of	)
	)
Puerto Rico Highways and Transportation Authority,	)
	)
Debtor.	)

OMNIBUS HEARING

BEFORE THE HONORABLE U.S. DISTRICT JUDGE LAURA TAYLOR SWAIN

UNITED STATES DISTRICT COURT JUDGE

APPEARANCES:

For The Commonwealth of Puerto Rico, et al.:	Mr. Martin Bienenstock, PHV Mr. Brian Rosen, PHV Appearing in New York Mr. Hermann Bauer, Esq.
For the U.S. Trustee Region 21:	Ms. Monsita Lecaroz Arribas, AUST
For Official Committee of Unsecured Creditors:	Mr. Luc Despins, PHV Mr. Juan Casillas Ayala, Esq.

APPEARANCES, Continued:

For U.S. Bank National Association:	Mr. Clark T. Whitmore, PHV Mr. John T. Duffey, PHV

For Puerto Rico Fiscal Agency and Financial Advisory Authority:	Ms. Suzzanne Uhland, PHV Mr. Luis Marini Biaggi, Esq. Ms. Carolina Velaz Rivero, Esq.
For Puerto Rico Electric Power Authority:	Mr. Kevin Finger, PHV Mr. Nathan Haynes, PHV Ms. Katiuska Bolaños Lugo, Esq.
For Pan American Grain Company, Inc.:	Ms. Maria Figueroa y Morgade, Esq.
For Cooperative de Ahorro y Credito Vegabajeña:	Mr. Carlos Quilichini Paz, Esq.
Fee Examiner:	Mr. Brady Williamson, PHV Ms. Katherine Stadler, PHV

Proceedings recorded by stenography. Transcript produced by CAT.

I N D E X

San Juan, Puerto Rico

November 7, 2018

At or about 9:45 AM

* * *

THE COURT: Good morning and welcome to counsel, parties in interest, members of the public and the press here in San Juan, those observing here and in New York and the telephonic participants. As always, it is good to be here in San Juan.

A brief reminder. The rules regarding devices in the courtroom, not to be used for communication or recording, apply to these and all proceedings, both here and in New York. And I'm grateful for your continued compliance with those principles.

I would now call upon counsel for the Oversight Board to begin the status report. Mr. Bienenstock.

MR. BIENENSTOCK: Thank you. Good morning, Judge Swain. Martin Bienenstock of Proskauer Rose for the Oversight Board.

Your Honor's request for a status report identified a few issues, the first of which was a report about the evaluation of recent disclosures of McKinsey Security Holdings. Your Honor, my firm, Proskauer, represents McKinsey in various matters, so the Oversight Board asked another of its legal advisors, the Luskin & Stern firm, to look into

this. And Michael Luskin, who is in New York, I can see him now on the video, is prepared to respond to that portion of the status report, if that's okay.

THE COURT: Thank you. That's much appreciated.

And so, Mr. Luskin, good morning.

I'm not able to hear Mr. Luskin, so we'll need to have the sound checked. Let's hold on for a minute.

MR. LUSKIN: Can you hear me? I'm at the lectern mic.

THE COURT: We're hearing you now. Thank you. Good morning.

MR. LUSKIN: Okay. Good morning, Your Honor, and thank you for allowing me to appear by video. This is my first in person appearance in these proceedings and I'm happy to be here.

I am here, as Mr. Bienenstock referred, to confirm my retention by the Board, my very recent retention by the Board on this particular matter, which is to investigate the consequences, the facts and implications of recent disclosures concerning McKinsey and its work for the Board and its holdings with Puerto Rico public debt.

As I said, this is at the very beginning of my investigation. It will culminate in a public report, not only on the factual findings, but also the Board's own procedures and policies concerning (inaudible) --

THE COURT: You'll need to speak directly into the microphone. You're starting to fade.

Did you say that your work will culminate in a public report?

MR. LUSKIN: Yes, I did, Your Honor.

The Board has made very clear that this is to be a transparent proceeding, that the report will be public. I expect it will take a couple of months at least, but it will culminate in a public report.

So I have no substance to report now. I really just wanted to introduce myself and to assure the Court and parties in interest that this matter is being taken, of course, very seriously by the Board, and we're doing what I think the Court and parties would expect us to be doing.

THE COURT: Thank you.

MR. LUSKIN: Unless the Court has any questions, I'm happy to yield the microphone back to Mr. Bienenstock to continue the status report.

THE COURT: I just -- you may have mentioned this, but do you have a particular time frame and prospect for the work?

MR. LUSKIN: I'm currently anticipating it will take a couple of months, a few months. I'd really like to get this done by year end, if at all possible.

THE COURT: Thank you, Mr. Luskin.

MR. LUSKIN: Thank you, Your Honor.

MR. BIENENSTOCK: Thank you, Your Honor.

In terms of the status report about the anticipated timetables for the proposal of adjustment, plans of adjustment of Title VI, Title VI Qualifying Modifications, I can report as follows: As the Court knows better than anyone else, yesterday the order was entered approving the Qualifying Modification for GDB, which was a major step forward, handles about four to five billion dollars of the 74 billion approximate amount of bond debt that we're trying to restructure.

The COFINA deal that resulted from the process Your Honor kicked off with the approval of a stipulation way back towards the beginning of the case led to a proposed plan of adjustment that has already been filed. And the proposed disclosure statement is to be heard, I believe, in less than the next two weeks. I think it's --

THE COURT: November 20th.

MR. BIENENSTOCK: Oh, November 20.

THE COURT: Yes.

MR. BIENENSTOCK: And if that is approved, and nothing goes wrong, including tinkering with the deal through legislation, et cetera, we hope to -- we hope that that will be confirmed in January of 2019.

The next major matter -- they're all major matters,

but the next major debt restructuring that I can report on is PREPA. PREPA, as Your Honor knows, has approximately eight to nine billion dollars of bond debt and several billion more of other types of financial debt and other debt.

The first two segments of my report on PREPA are based on information that we've received from PREPA's representatives. In terms of its cash position, as of November 2, operating cash balances were approximately 327 million dollars. Because the Commonwealth debtor in possession loan facility requires the cash on hand above 300 million dollars be paid to the Commonwealth on account of the loan, a payment of 27 million dollars was made on November 2, 2018, leaving a debtor in possession loan balance of approximately 147 million dollars as of that date.

PREPA's operational cash receipts are currently sufficient to serve as expenditures for operations. During the month of October, average weekly cash collections from customers were approximately 65 million dollars. PREPA, therefore, should not require additional financing for operations in the near term. I want to emphasize that's operations.

As the Court knows, because of the hurricane, there was lots of repair and replacement to do, and some of it -- of course we get significant amounts from the Federal Government, but that doesn't cover everything.

THE COURT: Have the Federal Government dollars actually been coming in? I understand that there are some respects in which federal money has been approved but not actually disbursed.

MR. BIENENSTOCK: I'm not aware of that money coming in, but the Federal Government has obviously expended major funds for repair and replacement, which are funds that PREPA would otherwise have to expend. So in that sense, we've been the beneficiary of very substantial federal funds for the last year.

In terms of PREPA operations, PREPA is moving forward with reviewing responses to several requests for proposals for generation -- for generation for different parts of the island.

As Your Honor knows, the -- when we speak about the restructuring of PREPA, unlike the restructuring of some of the other entities, we're really talking about two restructurings proceeding simultaneously. One is for the debt. The other is to transform the method of generation from fossil fuels to other fuels that are both less expensive and cleaner. And it's somewhat tricky to coordinate the two, but that's what's happening.

As a practical matter, we believe investors will want to know what amount of debt they need to prepare to carry going forward, or that will be carried somehow going forward.

And we are anxious to deal with the debt in any event, so both processes are proceeding simultaneously.

PREPA continues to run the generation fleet as economically as possible, while keeping in mind the overarching goal of maintaining grid resiliency. PREPA is actively pursuing different alternatives for generation resources or a conversion to cleaner burning fuels, such as liquid natural gas.

Power has been restored to over 99 percent of the customers on the island. Current average weekly generation delivered to the power grid is approximately 93 percent of 2016 levels. Approximately 96 percent of the island's 342 substations, and 96 percent of the 56 transmission centers are energized. Approximately 88 percent of 103 large transmission lines are fully in service.

In respect of the debt restructuring aspect of PREPA, Your Honor, PREPA, the Oversight Board and AAFAF entered into a preliminary Restructuring Support Agreement, RSA, with an Ad Hoc Group of uninsured bondholders in July 2018, which has been extended several times and remains in place to allow the parties to complete negotiations on a more comprehensive RSA, for which we expect to seek Court approval when it's done.

The consenting holders hold a significant amount of the outstanding approximate 8.8 billion of PREPA bond debt. We will be meeting this week, and in fact, I believe it's in a

few hours in New York, with the Ad Hoc Group and significantly, one of the monoline insurers that filed the receiver motion to continue working through certain provisions of a definitive agreement.

So we're trying to expand the group from the uninsured bondholders that we did the initial RSA with to include the monolines that obviously they are the insurers of the insured group of bonds, and they have significant exposures and therefore, are significant to any debt restructuring.

We have also reviewed our current proposal with other monoline insurers that are party to the receiver motion. So there's communication and progress with both the insured and uninsured bonds.

It's hard to predict timing, but we certainly hope, and we know the bondholders hope, that we're talking about something that will culminate in at least a request for this Court's approval of the RSA in a matter of months when we might have a final plan of adjustment. We want it as soon as possible, but it's really hard to -- with any reliability, to give Your Honor a sense of when that might be possible.

As far as the transformation process, the process to transform the electric sector is proceeding on schedule in accordance with the Fiscal Plan.

The following is a summary of the recent and updated

milestones from the Fiscal Plan. The Public-Private Partnership, P3 Authority completed a market sounding process in mid June, which confirmed significant industry interest in a concession transaction for the private operation of the transmission and distribution system.

The P3 Authority posted a Request for Qualifications, an RFQ, on October 31 asking interested parties to submit their qualifications for operating and improving the transmission and distribution system, with responses due on December 5, 2018. The RFQ has been filed under an informative motion with this Court.

The P3 Authority will then issue a request for proposal seeking bids from the qualified candidates. And supporting legislation and the integrated resource plan are also in process and are expected to be completed in January.

So, Your Honor, we're -- as the Court can tell, simultaneous progress is being made, both on the physical transformation and on the debt restructuring. And it is so critical to reenergize growth on the island -- the cost of power is a fundamental factor in future growth -- that it's in everyone's interest, the government's, the people's and the creditors' to get this done as quickly as possible, and that's what we're trying to do.

THE COURT: And the qualifications and proposals that are being reviewed in this current P3 related process, that's

for an entity that will move and make more concrete the visioning for the transformation? Is that the phase or --

MR. BIENENSTOCK: Well, they will propose exactly how they would like to generate power, what type of fuel they will use, and the economic terms on which they're willing to do that and how much they're willing to pay for the right to do that.

THE COURT: Thank you.

MR. BIENENSTOCK: Your Honor, the other major debt restructurings, some of which can be handled independently and some which have interrelationships, are basically the Commonwealth, HTA, PRASA, PBA, UPR and others. And some of these, most likely UPR, but not definitely, are more prone to a Title VI than a Title III.

What I can tell you about these is not nearly as specific as what I could advise the Court about PREPA, but I can say that in every single one of these situations, there have been and are ongoing negotiations with either all or a subset of the creditors of each entity.

As Your Honor knows, to provide an example of the interconnectedness, there's a dispute between creditors of the Commonwealth on the one hand and creditors of HTA on the other as to whether the so-called clawback revenues can and should be clawed back from HTA to the Commonwealth and on what conditions.

That might create the need to propose or confirm both plans at once for HTA and the Commonwealth or not. It's not necessarily critical. But negotiations are ongoing with keeping those things in mind.

In some cases, things like toll hikes or other increased rates have to be part of the discussion, and the government is involved in that. And I can, from personal knowledge, say that every day is spent working on these things. But again, to give the Court a timetable would be really more guesswork than probabilistic.

I will say that if at all possible, we want to pull together restructurings that could be heard in some form or final form by the Court by this summer. That may or may not be possible with all of them, but certainly with some of them.

THE COURT: That is good news.

MR. BIENENSTOCK: Thank you, Your Honor.

THE COURT: Thank you, Mr. Bienenstock.

MR. BIENENSTOCK: The next item on the agenda are the Fee Examiner report and applications, so I'll turn things over to Mr. Williamson.

THE COURT: Thank you, Mr. Bienenstock.

MR. BIENENSTOCK: Mr. Williamson's colleague, Your Honor.

THE COURT: Good morning, Ms. Stadler.

MS. STADLER: Good morning, Judge. Katherine Stadler

of Godfrey & Kahn on behalf of Brady Williamson, the Fee Examiner, who is also here in person.

Judge, we filed our report on the third interim fee period applications last week recommending 28 applications for the Court's approval. Since the filing of that report, one additional application, that of Bennazar, Garcia & Milian, has been resolved. That application is on your agenda at item 11 on the deferred list.

So we will be moving the Bennazar application to the list of resolved applications that was attached to our report and submitting a Proposed Order, with Your Honor's permission, that will include all of the originally recommended applications, plus that one additional. And we will do that as soon as we have a ruling and instructions from the Court on our recommendations.

As you know, our report in this period addressed the McKinsey Consulting applications, all three of the interim pending fee period applications. So we successfully worked through a significant backlog there.

THE COURT: Yes.

MS. STADLER: We tried to carry out Your Honor's instructions in previous hearings and discussions to come up with a methodology for evaluating the reasonableness of the McKinsey fees, not withstanding the nature of their timekeeping or nontimekeeping, as the case may be.

As you know, they are retained on a flat fee that is based on a GSA contract price that the government has negotiated. While the Oversight Board is not technically an entitled user of that GSA price schedule, that pricing has been used as the foundation of the pricing that McKinsey uses. And we've gone through that for you in our report and I'm happy to answer any questions you have about that.

The other suggestion that Your Honor made that we took to heart was to try, as we might, to come up with some estimation of time being spent and number of timekeepers. And so the efforts described in the report resulted in the Exhibit B to the report, which is very crude, and I almost feel the need to apologize to McKinsey because I'm quite sure it understates the amount of work and person hours that are put into these projects on a weekly basis.

But not withstanding that, even using this very conservative estimate of hours expended, we've calculated an average blended hourly rate, which is generally consistent with other consultants working on these cases and in the market in general.

So with those observations, the Fee Examiner is comfortable now recommending to the Court approval of the McKinsey applications as they are filed based on the reasoning laid out in our report. And I'm happy to answer any questions you may have on that.

THE COURT: I would just comment that I commend and very much appreciate the fact that you took my request and guidance to heart, and the way in which you have laid out in the report the nature of the investigations and the benchmarks that you have used to make the evaluation that led you to support approval of the fees, and the insight that you have given us into the extent and nature of the work that is being performed for those fees. So thank you.

MS. STADLER: You're welcome, Your Honor.

If Your Honor has no other questions, I think a couple of the informative motions indicated that some speakers want to address fee matters. So the Fee Examiner has asked that those people speak first, and then he has a few wrap-up comments he would like to make.

THE COURT: I do have a couple of questions --

MS. STADLER: Okay.

THE COURT: -- before that.

MS. STADLER: Yes.

THE COURT: The report indicated some discomfort in ongoing discussions with fee increases --

MS. STADLER: Yes.

THE COURT: -- by service providers.

MS. STADLER: Yes.

THE COURT: Are those across the board, firm hikes in rates? Are those seniority, promotion related? Can you give

me a little bit more color as to what those are?

MS. STADLER: Yes, they are both and they are not uniform. As you know, all of the professionals have different engagement agreements with their respective clients, and some of those address issues.

For example, the Oversight Board counsel has a flat hourly rate which does not provide for rate increases at all. Others have contracts that explicitly allow them, and most have contracts that don't address whether they are appropriate or not, other than to say we will charge, you know, our pricing based on the following discount model. But the issue of rate increases and adjustments isn't explicitly addressed in most of the engagement agreements of the professionals that we are reviewing.

The increases that we have seen encompasses both of those categories that Your Honor just described. Seniority increases, which apply almost exclusively to associates in their first ten years of practice, those tend to be although aren't uniformly imposed in the fall on the employment anniversaries of many associates. And then there are also market adjustments that many firms implement, tending to be in connection with their fiscal year ends, many of which, but not all of which are also at the end of the calendar year.

So with this fee period falling fully in 2018 for the first time, we've really seen the impact of the rate increases

that might have happened last fall and in January for many firms. And I think as the report previews for you, the Fee Examiner is concerned not so much about the impact so far, although that is calculated for you and is not insignificant, but the potential for exponential --

THE COURT: Yes.

MS. STADLER: -- growth and the impact of those rate increases over time, given what we know about the expected timeline of the debt restructuring processes that Mr. Bienenstock just addressed.

And so Mr. Williamson, and he'll address this directly I'm sure, but he feels strongly that much as we did with the presumptive standards that we talked about last time, that he would like to propose and put into place presumptive caps on rate increases so that everyone's expectations are clear and so that hopefully we can minimize contested issues over rate increases.

At the moment, many of the applications that are on the deferred list are on the deferred list because they have that issue. And we're working very hard with the professionals, and the professionals are working very hard with us to work through those issues and try to bring those to a consensual resolution for the fees that have already been charged.

But going forward, Mr. Williamson feels very strongly

that in a case like this, there are some limits on rate increases that need to be imposed, and that without explicitly stating them, it creates, you know, a disincentive for people to exercise discipline in the imposition of those rate increases.

So much as we have in other areas, he intends to articulate either through a motion or objection, should that be necessary, hopefully through another advisory motion or motion for presumptive standards, we would bring back in December a proposal for a prospective treatment of rate increases that would cover both categories, both the market annual adjustments and the seniority adjustments, which probably will require slightly different treatment to each of them.

THE COURT: Well, I am glad to hear that Mr. Williamson is engaging these issues directly, and I will look forward to the results of the current negotiated work and also to his insight and advice as to appropriate structural measures to put in place, because we all know why we're here.

We all know how big the job is and how important it is for resources to be maximized for efficient, economical and productive work in creating a platform on which Puerto Rico can go forward with resources that can be used for the island's growth.

So thank you, and thanks to all of the professionals

who are cooperating in this process.

MS. STADLER: Thank you, Judge.

THE COURT: Thank you.

And so who would like to be heard next on fee issues? I have the names of a couple of people who are in New York. Is there anyone in this courtroom? All right.

We'll turn to -- I understand that -- was there someone in New York who wished to be heard on the fee-related issues? No. All right.

Then, Mr. Williamson. Thank you. Good morning.

MR. WILLIAMSON: Thank you. Good morning, Your Honor. Brady Williamson, Godfrey & Kahn.

Let me start with a generic but quite important observation, which is this is the third report we've given the Court. And I think at each juncture, we have commented on the cooperative, collegial approach for which much of the credit goes to the professionals themselves.

Now, I know the Court expects that. The Court expects that out of the professionals. The Court expects that of us. But it's noteworthy because as we're now finishing the review of the third period, the issues, quite frankly, are getting more difficult, which means the negotiations take a little longer and the negotiations themselves get more difficult.

But with respect to the communication, the collegial

nature of the discussions, I think the Court can be satisfied that if there are objections, if there are problems, it will not be for want of trying to avoid them.

In about two weeks, Your Honor, the professionals will file their fourth set of fee applications, which then gets us into the second year of the review process. And it's important, I think, to note that we view our challenges as both retrospective, that is, to look at the fee applications, which are always two or three months behind, or the process by definition is. But as the Court could tell from Ms. Stadler's remarks and the report, we're also trying, with the cooperation of the professionals, to be prospective, so that we're not constantly saying, oh, you should have done this, you should have done that.

And I think as Ms. Stadler said, the December hearing, I think, will feature at least two points that we'll either bring as a motion or, if necessary, in the form of an objection. But again, our goal is not just hindsight, but hopefully foresight.

And as the Court said, while massive resources are needed here in the Commonwealth, they also need to be massive resources applied efficiently. Thank you.

THE COURT: Thank you.

Mr. Bienenstock.

MR. BIENENSTOCK: Your Honor, thank you. I just

wanted to add one new item that pertains to the discussion that just occurred. It has nothing to do with what Mr. Williamson wants to do or to contradict anything that's been said, but it's simply new information that's going to likely lead to changes that the Court might as well know about now rather than be surprised later.

There is legislation that we understand has a likelihood to be enacted in Puerto Rico that will for the first time single out advisors in these cases and tax them, creating -- starting with a withholding tax of 29 percent for time spent working on the case outside of Puerto Rico. If that happens, I know from my own firm and I suspect for other similar firms both in and outside the legal industry, no firm can afford to provide the services for 29 percent less than it's currently providing.

So there will probably be adjustments to professionals' fee arrangements that will obviously be in the applications that the Fee Examiner will be looking at, but they will be unavoidable if this legislation is enacted.

THE COURT: Are there hearings being conducted at which publicly and formally professionals who will be affected will be able to make this point to the legislators?

MR. BIENENSTOCK: To my knowledge, no. We're just being told that this is what's happening. And the sad part about it is it likely will not result in any net benefit to

the revenues of the government, because the tax will be offset by increased rates to cover the tax.

Just to give Your Honor a sense of the perspective, at the outset of this, I think we were all aware that there was something like a 1.5 percent tax on time spent in Puerto Rico. And we all knew that when we made our fee proposals. But there was never anything like a 29 percent tax on time spent outside Puerto Rico, which is the bulk of the time for most of the professionals.

THE COURT: Yes. And when you say withholding -- although you say withholding, I think I'm hearing you that this isn't just a timing of money issue. This is a withholding that is understood to be commensurate with intended actual tax collection that under current federal and out-of-state tax principles would not offset other taxes, but would be a net increase, or a net decrease in the revenues?

MR. BIENENSTOCK: Well, Your Honor, that's exactly what we're studying before we, and I think the other advisors and professionals, request any type of amendments. If it's a dollar-for-dollar credit against other taxes, it may just be a timing issue and have very little impact. But if it's not just a credit, and I don't think it is, then it's basically a reduction, a very material reduction of what everyone's -- but we will know exactly what it is before we -- at least in my firm's case, but I'm sure in everyone's case, before we

propose or suggest any amendments to any fee arrangements.

THE COURT: And are you able to -- are you working with AAFAF's counsel to be able to communicate to government interests the complexities of the concerns here?

MR. BIENENSTOCK: Your Honor, yesterday I was surprised when I raised it that I was giving them information.

THE COURT: Better late than never.

MR. BIENENSTOCK: Which is rare. Usually they know before I know. And so yes, the answer to Your Honor is yes, we're discussing it with AAFAF.

THE COURT: Thank you.

MR. BIENENSTOCK: Yes.

THE COURT: That is a matter of great concern if at the end of the day, there are transaction costs and very real out-of-pocket costs in terms of firms seeking to be grossed up for the effect of the tax.

So I know that professionals have a deep and personal interest in this, and I hope that there will be effective discussion so that at the end of the day, whatever happens is truly for the benefit of the Commonwealth and doesn't impede these proceedings.

Now, I had been given notes that a couple of people might have wanted to speak in relation to the COFINA status from New York, and so I didn't call for that in connection with the status reports, and I apologize for any oversight in

that regard.

So is there anyone in New York who -- here's someone coming to the podium now. Thank you.

MR. ROSEN: Thank you, Your Honor. This is Brian Rosen of Proskauer Rose. I just wanted to supplement what Mr. Bienenstock said.

Your Honor, things are moving very well with respect to the COFINA Plan of Adjustment. And he is correct and you are correct when you were referring to the dates for the upcoming hearings.

The other item, though, I wanted to bring to the Court's attention was that on October 18, the Unsecured Creditors' Committee slash Commonwealth agent had filed a motion for a Scheduling Order, and it was in connection with what was referred to as a motion to enforce that they were planning to file by a date certain. After that was filed, Your Honor, there was a period of negotiation between the Oversight Board, the Unsecured Committee slash agent, and also the COFINA agent.

And we are happy to report that on Monday, under the cover of an informative motion filed by the Unsecured Creditors' Committee, was attached a stipulation which compromised and settled the motion to enforce, which actually was not even filed.

It provides for that matter to be essentially held in

abeyance pending events that might or might not occur between now and the hearing on January 16 in connection with the approval of a 9019 motion and the confirmation of the COFINA Plan of Adjustment.

Specifically, Your Honor, there is a provision in there with respect to a supplemental certified fiscal plan being filed for the Commonwealth. And if, in fact, that doesn't occur, then the motion to enforce will not be filed. And also, the Unsecured Committee slash Commonwealth agent will not otherwise object to the confirmation of the plan or the 9019 motion for approval in the Commonwealth case, Your Honor.

I don't know if the Court had the opportunity to review that informative motion or the stipulation at this point, but I wanted to bring it to the Court's attention.

THE COURT: I am in the process of reviewing it. It's something like a 27-page stipulation with many details. So we are in the process of reviewing it.

And I take it the request, although it was filed under an informative motion as opposed to a notice of presentment or anything, the request and expectation is that the Court enter it sooner rather than later since one of the provisions is that if it's not entered soon, a November 16 deadline comes back?

MR. ROSEN: That is correct, Your Honor. The

stipulation provided for a so Ordered line for the Court. But yes, it would otherwise require the Creditors' Committee slash agent to file some pleadings by next week.

THE COURT: All right. So as I say, we are in the process of reviewing it to ensure that I understand what I am being asked to sign. And if anybody has any major, substantive issues with it, they'd better let -- file an informative motion and let us all know sooner rather than later, because it is my goal to get that in place, as long as I don't have problems with it, sooner rather than later.

MR. ROSEN: Thank you very much, Your Honor.

THE COURT: Thank you.

There was someone from Willkie Farr in New York? Did anyone else want to be heard from New York?

MR. ROSEN: Your Honor, it's Brian Rosen again. Mr. Forman is here, but he said in as much as there's nothing to address, he has nothing further to say.

THE COURT: Thank you very much.

And I neglected before Ms. Stadler and Mr. Williamson needed to leave to conclude the Fee Examiner portion by saying that the Court approves the Fee Examiner's recommended actions on the fee applications that are listed in the operative schedule to the Fee Examiner's report, with the addition of the formerly deferred item that Ms. Stadler referred to that had been number 11 in the list of deferred items.

And the Court expects that the Fee Examiner will promptly be submitting a Proposed Order, and the Court does intend to enter that Order.

And so the next item on the Agenda is the Debtors' Motion to Establish the Omnibus Claims Objection Procedures, which is ECF entry number 4052 in case 3283.

MR. ROSEN: Your Honor, it's Brian Rosen again from Proskauer Rose.

Your Honor, we filed this motion, excuse me, and it entailed or it provided a connection within the notice period of October 23. We did not receive any objections to the relief that was being requested in the motion.

Specifically, Your Honor, what we had asked to do in there, in the proposed objection procedures, was really to comply with Rule -- Bankruptcy Rule 3007, and essentially to allow us to file Omnibus objections in amounts greater than 100.

Specifically, as the Court recalls, when I reported previously, there are approximately 165,000 to 170,000 claims that were filed in this case. And as an example of this, in connection with COFINA, there were between 3,500 and 4,000 claims filed.

Most of those, Your Honor, are multiples of the same bond type of claims and really didn't need to be filed. When we distilled down what the number of claims actually might be

in COFINA, they number approximately ten.

So, Your Honor, it's obviously important for us to try and remove as many of these claims as expeditiously as possible, specifically in connection with solicitation for the Plan of Adjustment that hopefully will begin by the end of November.

So we are envisioning filing multiple Omnibus objections, and we were looking to increase the number of claims which might be included in an Omnibus objection from the 100 to approximately 500.

As I said, Your Honor, these are multiples of bond claims, and if we have the claim that's already been allowed, or we will allow with respect to the Trustee, the Bank of New York Mellon, there is no reason for the multiple claims to be on the register.

Likewise, Your Honor, there are other claims in COFINA that have nothing to do with COFINA. And to the extent that they are one-off claims and cannot be handled in a common type of form of objection, we will file individual objections to those claims. And we envision there will be approximately 50 of those, Your Honor, all of which, though, are for no liability save that they really relate to a different entity or not any of the Title III debtors at all.

But specifically, Your Honor, in connection with this Omnibus Procedures Motion, we did, upon consultation with the

Creditors' Committee, file an Amended Notice of Revised Procedures. Your Honor, we did that on October 31st. And we included with that a blackline copy of the Proposed Order, as well as slight modifications to the objection procedures themselves.

Specifically, Your Honor, we removed the possibility that we could oppose any of these claims on a substantive basis. Rather, they were all nonsubstantive in nature.

We wanted to make sure that the notices were both in Spanish and in English. And we provided for the notice of filing of reports with the Court when we do settle some of these claims. This would have been quite possibly the only objection, had it been interposed, but as I indicated, Your Honor, we were able to resolve this with the Creditors' Committee, and that's why we filed the Amended Notice and the Proposed Order.

Hopefully, Your Honor, that might allay any concerns the Court might have with respect to this, and we ask the Court to enter the revised Order that we filed under the Amended Notice.

THE COURT: The clarifications in the revised Order are quite helpful. I just have one question and one request, I'll call it.

So the question is just to confirm that you anticipate noticing up these large Omnibus objections in

connection with scheduled Omnibus hearing dates; is that correct?

MR. ROSEN: Yes, Your Honor.

THE COURT: All right. And then the request is that we move the reply deadline from two business days before the Omnibus hearing date, which is a travel date for many of us, to seven calendar days before the Omnibus hearing date. Can you live with that?

MR. ROSEN: Absolutely, Your Honor.

THE COURT: Thank you.

MR. ROSEN: We'll make the modifications and if you don't mind, we'll then submit a proposed final Order for the Court's entry.

THE COURT: I appreciate that very much. Thank you, Mr. Rosen.

And Mr. Despins is coming to the podium here.

MR. DESPINS: Good morning, Your Honor. Luc Despins with Paul Hastings on behalf of the Committee.

We're happy that we're able to resolve the issues regarding this procedure. I just want to mention because it's important that these are, I would say, the easy claims to deal with. The main event is really dealing with all the other claims.

And we are working with the Oversight Board on coming to court with an ADR procedure that would be expedited, that

would be streamlined, because as the creditors on my committee will often say, even a plan of adjustment, it would be adopted tomorrow, confirmed tomorrow that would say we get X cents on the dollar, unless these cents are actually given because the claims have been resolved is meaningless, and meaningless also for the economy of Puerto Rico.

They need to get those dollars, to spend those dollars. And so, therefore, that process is complex and it's very important. We're working with the Oversight Board on that, hopefully coming back to the Court soon on that.

Thank you, Your Honor.

THE COURT: Thank you. Do you have a sense of a time frame? Yes, I did notice when this was filed that it was the --

MR. DESPINS: Easy claims.

THE COURT: The easy ones, yes. And so I've been waiting to hear what structure will be proposed for the ones that are more complicated.

MR. DESPINS: Well --

MR. ROSEN: Your Honor, if I could perhaps address that?

THE COURT: Yes.

MR. ROSEN: Yes. We have been working with the Unsecured Committee with respect to global procedures, and we've been working with Ms. Uhland, who has been sitting there

on behalf of AAFAF, to come up with a concept that works for everyone.

Obviously we had hoped to do this in the context of a plan of adjustment, but as Mr. Bienenstock indicated, that is not going to be as timely as we hoped it might be. So we are hoping to finalize these procedures. If we can get it done and filed before year end, that is our goal, Your Honor. We are actively engaged in that dialogue.

It will set up a process that will extremely streamline not only the time frame in connection with hearing these matters and bringing them on among the parties, but also the amount of information that might otherwise be required for the person who will be hearing and determining the allowance of these claims so that it would be relatively small paperwork and something easy for the Court or such other person to ascertain.

THE COURT: Thank you. And so we might expect to have something in connection with the January Omni or the Omni after that?

MR. ROSEN: I would hope it would be considered in connection with January, Your Honor.

THE COURT: Thank you very much.

MR. ROSEN: Thank you, Your Honor.

THE COURT: All right. Is there anything else we need to address before we move to the contested matters? All

right, then.

The next agenda item is Pan American Grain Company's Motion for Relief from Stay, which is ECF number 4004 in case 3283.

Good morning, Ms. Figueroa y Morgade.

MS. FIGUEROA Y MORGADE: Yes, Your Honor. Good morning. My name is Maria Mercedes Figueroa y Morgade on behalf of Pan American Grain Company, Inc.

Pan American is the movant in the Motion for Relief from Stay to request an Order to execute set-off, as the Court mentioned, at ECF number 4004. In order to efficiently use this time before the Court, Pan American would like to focus today's hearing on the pivotal issue in this matter.

Pan American filed the request for set-off in order to use the value of its prepetition bonds due prior to the filing of the Title III case and set-off against a prepetition power service liability owed by Pan American to PREPA.

And the pivotal issue here stems from the oppositions filed by the PREPA Trustee, U.S. Bank National Association and PREPA itself. Both of these objectors were -- both of these objectors stem their arguments on the no-action clause included in the Trust Agreement.

The objections are well-taken and well-founded, but the Court can use, and Pan American moves the Court to use its equitable powers and just eliminate Pan American from that

no-action clause.

THE COURT: How is it that the Court could, by use of an equitable power, essentially rewrite a contract and grant a right to a party that does not exist under a contract that binds not only that party but many other similarly situated bondholders, binds the Trustee, and obviously to which the bond issuer is also a party?

MS. FIGUEROA Y MORGADE: Well, Your Honor, Pan American is not requesting that under the Court's equitable powers, it rewrite the contract or rewrite the no-action clause. What Pan American is requesting is that under the factual scenario where there are eight billion dollars in debt by PREPA to bondholders, this one million dollar set-off transaction that is allowed under the Bankruptcy Code and is allowed under PROMESA, because it is incorporated in PROMESA's general provisions, that would allow the Court to provide Pan American the opportunity to execute the set-off.

If the Court finds -- that is why it's the pivotal issue, is the no-action clause. If the Court finds that the no-action clause is a broad application and will be applied also to Pan American's right to set-off under Section 553 of the Bankruptcy Code, then the matter is over.

If the Court finds that there are factual grounds regarding the amounts and the harmless execution of the set-off, which will really not effect other bondholders, will

not effect PREPA -- PREPA will receive cash upon the execution of the set-off, and it will not effect the work of the indentured Trustee.

THE COURT: Thank you. So I am -- before you sit down, I'm assuming that the facts on which you would want me to focus in such an analysis basically boil down to the question of whether this particular proposed settlement would be de minimis financially in the broad scheme of things.

I would ask whether there's any kind of difficulty with that approach when you think -- when I have to consider the possibility that there are other PREPA bondholders who may also be customers. There might also be other bondholders who have some equally compelling rationale out of other commercial transactions so that there would be -- even if this were possible legally, this could be a situation that's not a one-off situation, that would have individualized complications, transaction costs, and ultimately, financially might even add up to something that's not de minimis.

Is there a way that you have in mind for me to manage my thinking about this issue that would give me some comfort in that regard?

MS. FIGUEROA Y MORGADE: Your Honor, it's really a factual review upon the particular circumstances of what comes before the Court and is requested by other bondholders. There is really no bright light to resolve this case. It has to be

on a factual review and fact intensive.

And we do understand that the Court would be concerned with how events unfold and if this would open the door to other bondholders coming forward, but each one would have to meet the standard of having factual grounds to come forward and convince the Court of their legal request.

Here, Pan American has a right to set-off, and most importantly, Pan American, as a bondholder, did not voluntarily agree to waive its rights to set-off. It did not expressly consent to the application of the no-action clause. And the Trustee Agreement, the indenture contract is really a standard contract that was imposed on Pan American.

So what we have here is an entity requesting to set-off to a prepetition debt with PREPA, and that is a statutory right under the Bankruptcy Code applicable in PROMESA.

And we have the indenture agreement, but it appears that from the arguments of both the Trustee and PREPA, what they want to do is elevate the indenture agreement to a statutory provision of the Bankruptcy Code.

So the balances of equities here and the Court's equitable relief would allow, in fairness to Pan American, which is a request that is of limited amount, of a limited amount, and that will yield cash for PREPA to simply have the Court allow Pan American to execute the set-off.

THE COURT: Thank you.

MS. FIGUEROA Y MORGADE: That's our position. Thank you.

MR. FINGER: Good morning, Your Honor.

THE COURT: Good morning.

MR. FINGER: Kevin Finger of Greenberg Traurig on behalf of PREPA.

As counsel noted, PREPA did file an objection, as did the PREPA Bond Trustee, U.S. Bank. Counsel for U.S. Bank and I have agreed to divide our time so that I'll take nine minutes and he'll have six minutes for his argument.

THE COURT: Thank you.

MR. FINGER: And Your Honor, let me take what was going to be the end of my argument and put it at the beginning because of the way counsel has presented it. But essentially in Pan American's reply, they ask the Court to adopt the concept of equitable set-off.

There is no provision under the law for a concept of equitable set-off. In fact, the First Circuit in the *Public Service Company of New Hampshire* has explicitly rejected the concept of equitable setoff. So there is no basis here for the Court to apply that principle and permit Pan American to move forward with set-off.

This brings us back to the law. There is no right to set-off. They have claimed a right to set-off, but it doesn't

actually exist under the law. And that's because of the requirements of Section 553 of the Bankruptcy Code, which requires both a mutuality of debt, as well as a substantive provision either under federal or applicable state law that creates the right to set-off. A movant cannot satisfy either requirement.

The First Circuit has defined mutuality as debts with the same right, between the same parties, in the same capacity. And the rights here are defined by the Trust Agreement. It's not an elevation of the Trust Agreement to that of a statute, but it's the document by which bondholders agree to be bound in the provisions therein, and that's what defines the rights of the parties.

So to be sure, Pan American owes a set debt to PREPA in the form of two million dollars owed for electrical service prepetition, but PREPA does not owe that obligation to Pan American. PREPA owes the obligation to repay the bonds to the PREPA Bond Trustee who acts on behalf of the bondholders who share in any receipts to the Trustee in a prorata basis.

So they are not the same parties, and that is made clear by, as counsel referenced, the no-action clause, which is Section 808 of the Trust Agreement, which does not permit a single bondholder or even a collection of bondholders to bring an action unless they have at least ten percent of the outstanding bonds.

That particular exception to the no-action clause does not apply in this case. So in the words of movant's counsel, that essentially ends the analysis. The no-action clause does not permit the bondholder to bring this action and, therefore, there is no mutuality of the parties or of the debts.

The debtors are also not in the same capacity. For many reasons, because they're not mutual parties, the obligations don't run the same way, but also because the obligation on the part of PREPA to repay the bonds is secured and the debt that's owed by Pan American to PREPA is unsecured, so there are different capacities for this.

Also, the request for set-off essentially amounts to a recourse against PREPA for the payment of the bonds. Under both the Bankruptcy Code, Section 927, and the Trust Agreement, the PREPA bonds are nonrecoursed to PREPA. But to allow setoff in this case essentially recategorizes that and makes it a recourse to PREPA.

So Section 553 mutuality is not achieved. There's also not a substantive permission of Puerto Rico law that permits set-off in this case. The two statutes at issue -- 31 LPRA 3221 essentially imposes a mutuality requirement for there to be set-off, and as discussed, that is not met.

The next section, 3222, has a five-part test for which the movant fails to satisfy at least three of those

requirements. The first is essentially, again, a mutuality requirement that because the no-action clause is not met here, also again because of the no-action clause, the debt is not demandable. In this case, Pan American is not permitted to bring a claim to enforce the terms of the Trust Agreement.

And the fifth requirement under this statute is that there not be a third party who has retention rights. And it's explained in our papers. Section 905 of the Trust Agreement does provide retention rights to the PREPA Bond Trustee.

And, Your Honor, even if the Court can find that there's a setoff right here, that relief is still permissive, not mandatory by the Court. And the harms here that would be invoked on a variety of levels are significant. They're not de minimis.

First of all, Pan American owes over two million dollars to PREPA for prepetition electrical service. PREPA's need for dollars has been well-documented in this case and it continues to this day. That failure to provide two million dollars affects not only PREPA, but other constituents who rely on increased revenues to PREPA to continue to operate.

Mr. Whitmore can address this a little more particularly, but it also would -- this recovery, a hundred cents on the dollar for the bond holdings would also deprive that amount to the other bondholders who, under the Trust Agreement, share in any recovery on account of the bonds on a

prorata basis.

So there are significant harms here that would be worked to permit a set-off, so the Court should, even if it were to find a right to set-off, not permit it to move forward.

Finally, with respect to the stay, Your Honor, there is nothing on the factors that demonstrates cause to lift the stay. There is no judicial economy or any other factor that can be saved here.

As counsel has asked, the proposed way of handling all the different types of claims here would be on a factual review, which would require apparently an examination of the facts underlying each request for set-off, and that simply requires Court time, PREPA's time and other parties' time that can better be spent to do the type of activities that Mr. Bienenstock described already.

So there is no basis. There is no right to set-off and there is no basis to lift the stay or permit the set-off, even if the Court does find one.

THE COURT: Thank you, Mr. Finger.

MR. FINGER: You're welcome.

THE COURT: Mr. Whitmore.

MR. WHITMORE: Your Honor, Clark Whitmore from the Maslon LLP law firm on behalf of U.S. Bank, National Association, as the PREPA Bond Trustee.

I believe that movant's counsel conceded the fact that the no-action clause was applicable to bar their ability to bring this, and that also destroys mutuality for purposes of set-off, so it's a fairly simple equation for the Court to deny the motion.

I would simply like, Your Honor, in light of the request, that the Court take into account equities, which obviously exist. Every small business wants to get all the money that they can, and I certainly appreciate the perspective of equities from Pan American's perspective. I would like to make sure that the Court appreciates the equities from the perspective of the other bondholders who we have duties to under the Trust Agreement.

There are really two fundamental principles under the Trust Agreement that they're seeking to have the Court disregard. The first is that of collective action. They want to just take a shortcut and ignore the requirement under the Trust Agreement that either the Trustee or groups of bondholders who have various rights to direct the Trustee or act independently proceed in that way.

These are -- this is an important principle. And just allowing somebody to say, hey, I'm only owed a million dollars, let me just violate the rules, really does put that principle at risk in ways that could create unanticipated problems later on.

And perhaps more fundamentally, the second major fairness principle under the Trust Agreement is that pledged revenues were pledged to all of the bondholders, and the recoveries from those pledged revenues are supposed to go to all the bondholders after they share the cost of expenses.

So what you have here under the rubric of equities is you have somebody saying, I would like to take some of PREPA's revenues that should have gone to PREPA and were pledged to all the bondholders and just grab it for myself.

So obviously we think that's not an equity that cuts in favor of the movant, but rather one that cuts in favor of the other, albeit more diluted bondholders who we'd like to give voice to here today.

So I can go on, but I don't think it's really necessary in light of the concessions that have been made by movant's counsel. I would just like to note that U.S. Bank's position with respect to its claim and the nature of its claim is we don't necessarily agree with all of the statements that PREPA has made in its papers with respect to the nature of the debt. It's not necessary for the resolution of this motion. But our position with respect to the claim is set forth in our Proof of Claim, and if need be, we'll address that at some later time.

And then finally, I would like to point out that U.S. Bank favors the active involvement of bondholders in the Title

III process and doesn't intend for the decision it made to step up in this particular case and file an objection to standing to discourage bondholders from participating in these Title III cases, because this case really presented a very unusual attack on the fundamental principles of the Trust Agreement and rose to a level of contradiction to the rights of other bondholders where we felt it was appropriate to lodge an objection.

THE COURT: Thank you, Mr. Whitmore.

Ms. Figueroa y Morgade, would you like to make reply remarks?

MS. FIGUEROA Y MORGADE: No, Your Honor. The matter is submitted for the Court's consideration.

THE COURT: Thank you. And so the motion and arguments are fully submitted.

I did read very carefully all of the submissions before coming to court today and have listened carefully to what has been said here. I will now make my oral ruling on the record.

Before the Court is Pan American Grain Company, Inc.'s Motion for Relief from Stay to Execute Set-off, which is docket entry number 4004 in case 17-3283, and I'll refer to it as the motion.

The motion seeks relief from the automatic stay to effectuate a set-off under Section 553 of the Bankruptcy Code,

which applies in these Title III proceedings pursuant to Section 301 of PROMESA, to set off movant's PREPA bond investments against its prepetition electricity bill owed to PREPA.

The Court has considered carefully all of the parties' submissions and arguments, and for the reasons that I will now explain, the motion is denied.

I will first take up the question of standing or the power or ability of the movant to make this application in the first place. Due to the collective structure of bondholder rights and remedies under the Operative Trust Agreement, and specifically because of the no-action clause of that agreement, which counsel have discussed, movant does not have standing to unilaterally bring proceedings to enforce collection upon its PREPA bonds.

Section 808 of the Trust Agreement, which we are referring to as a no-action provision, prohibits individual PREPA bondholders who hold less than ten percent of the principal amount of outstanding PREPA bonds from pursuing remedies in their own name without complying with certain requirements.

Counsel, may I remind you that court is in session and I would ask that if you need to have conversations, you do that outside of the courtroom. Thank you.

Moreover, the no-action clause of the Trust Agreement

requires that all proceedings in law or equity brought by individual PREPA bondholders be maintained for the benefit of all PREPA bondholders. Nothing in the trust instrument or in bankruptcy law changes the powers of an individual bondholder under the Trust Agreement upon the issuer's entry into a bankruptcy proceeding.

Movant's attempt to distinguish the case *In Re: American Roads, LLC,* 496 B.R. 727, from the Bankruptcy Court of the Southern District of New York in 2013, a case that construed an intercreditor agreement that defined bondholders' rights inter se and vis-a-vis the Trustee is similarly unpersuasive.

Here, as in that case, the operative agreement defines and limits bondholders' rights and centralizes powers to take actions with respect to the bonds. The Court, therefore, finds that not withstanding the broad provisions of Bankruptcy Code Section 1109, movant lacks standing to bring the present motion in violation of the Trust Agreement's no-action clause.

And turning specifically to the no-action clause and whether an equitable exclusion from that clause would be feasible or appropriate, movant offers no statutory or precedential authority in support of its argument that the Court should use its equitable powers to exclude the movant from the limitations imposed by the Trust Agreement's

no-action clause in order to allow the movant to pursue the effectuation of its sought after set-off.

In effect, movant is asking this Court to create an additional noncontractual right to direct payment for certain PREPA bondholders. There is no legal basis for such a revision of a complex contractual arrangement to benefit a single bondholder that has no right to individual relief as against the issuer under the governing documents. Such relief would also be inequitable.

Under movant's proposed construct, individual bondholders would be enabled by happenstance of their independent electrical service customer relationships with the issuer, with PREPA, to obtain the practical equivalent of 100 percent payment on their bonds from an issuer that represents that it is not in a financial condition to make such full payment to all other holders of the same bonds.

Such relief would, therefore, effect an inequitable distribution of the debtor's property and would deprive the bondholders and other creditors of PREPA of assets that could otherwise be distributed equitably.

The Court denies the motion to the extent that the movant seeks exclusion from the controlling no-action clause of the operative Trust Agreement.

And finally, I would address the issue of mutuality, which is a requirement of Section 553 of the Code. The movant

argues that mutuality exists here, and that argument is unfounded and again, fundamentally inequitable.

The existence of a mutuality requirement necessarily means that there must be something more than mere identity of obligor and obligee between the two debts to be set off. Furthermore, in light of the no-action provision of the Trust Agreement and bond terms providing that PREPA must pay principal and interest due on the bonds to the Trustee, rather than directly to individual bondholders, even the identity of obligor and obligee is lacking under the circumstances presented here.

Thus, because the movant lacks standing to seek the individual remedy of a set-off, because it is not demonstrated that it has any legal right to set-off, and because there is no proper basis for its request for recognition of an equitable entitlement to such a remedy, the Motion for Relief from Stay is denied and the Court need not go on to address the *Sonnax* factors.

So the Court will enter an Order indicating that the motion is denied for the reasons stated on the record. This oral decision resolves docket entry 4004 in case number 17-3283.

Counsel, I thank you for your arguments and presentations today.

The final contested matter on the agenda is the

Motion for Relief from Stay of Cooperativa de Ahorro y Credito Vegabajeña, I'm sorry if I butchered that, and that is ECF number 4011 in case 17-3283.

And so Mr. Quilichini Paz.

MR. QUILICHINI PAZ: Yes, Your Honor. Good morning.

THE COURT: Good morning.

MR. QUILICHINI PAZ: Carlos Quilichini for the Cooperativa de Ahorro y Credito Vegabajeña.

Your Honor, basically, in this case, the claim to the funds arises from a statutory basis, basically Law Number 196 of the year 2011, which was drawn basically to entice further credit unions and other financial institutions to grant credit, extend credit facilities to the participants in the ESR, the Employees' Retirement System participants.

And due to that specific law, as a matter of fact, the motives within the law specifically stating, among others, that the purpose of the specific motive of the law was to ensure the operational solvency of a credit union, it is necessary to increase the contribution percentage that a participant may voluntarily authorize to be encumbered to secure the personal loans.

So what the law did was to increase the limits by which a participant in the system could actually assign his funds within the system, which are actually payroll deductions

or voluntary contributions to this system, and it allowed it to be assigned as a collateral for the loan the credit union would do.

THE COURT: Was it the bank's understanding that the participant contributions went into a separate, separately kept savings type of account for the participant or what -- what is the benefit that was being assigned?

MR. QUILICHINI PAZ: We believe it's not, because as the contract documents show, and I specifically refer to Exhibits A and B that were added, specifically the assignment agreement for the pensioners or assignment agreement for participants, the certificate of estoppel that was actually executed by the ERS -- which the clear language on the contract specifically states three things: One, on the estoppel, on the estoppel issue, that the ERS guarantees, certifies that the debtor, referring to the participant, is a bona fide participant of a Puerto Rico retirement system.

Number two, that it has been notified that the interests of the debtor to the participant in the amounts of contributions made by way of deductions have been assigned, including interest as a guaranty to the creditor, in this case would be Cooperativa de Ahorro y Credito Vegabajeña, a designee under the terms of the agreement.

And number three, most importantly, Your Honor, it says specifically that as of the date of this notification,

the debtor has contributed the amount of X dollars. Specifically, in our case, most amounts were 25,000 dollars. As shown in Exhibit D, the cooperativa granted 37 loans totaling, amounting to $525,422.93.

So the contract agreement around the ERS specifically stated that they had knowledge and that they guaranteed that a specific amount had been put into assignment and as collateral for the loans. That's on the contract issue.

But besides that, the specific terms of the law, and again, that would be Act 196, specifically states, Section 2-119, as follows: Contributions that may be designated by the participant as collateral for any loan originating or required by these agencies, savings and credit unions and the Cooperativa Bank of Puerto Rico, underlined, may only be used as collateral for the principal and interest of such loan.

Then the same statute goes on to Section 4-110 and specifically states that the statutory lien was created, and specifically states the following: The statutory lien created in this section, Section 4-110, shall remain in full force and effect in the event that the mortgage or personal loans are transferred by the administrator to third parties pursuant to Section 4-116.

That is, we have a statutory lien. We have a specific assignment of determined funds certified by the ERS as collateral for Cooperativa's loans in each and every one of

the 37 Proof of Claims filed by Cooperativa in this case.

These were all -- these were all, as I said, direct contributions from the participants' payrolls into these accounts. So that's why we hardly find to believe -- or I mean we express surprise that in the objection at paragraph ten, the ERS states that there were no individual accounts.

That is contrary to the specific estoppel certificate. It's contrary to specific statutory language, which is comprised in Section 2-119 and in Section 4-110. So basically we find it -- and of course it even says, Section 4-116, that the statutory lien created in this section shall remain in full force and effect, even in the event of transfer of the loan.

So the application of the other law cited in the objections, specifically the Act 106 enacted in 2017, which is, of course, after the filing of the petition in the Title III cases, and besides, let me clear the point, all these loans were prepetition. All these loans are prepetition.

THE COURT: And the 2017 law is the one that is being referred to as the PAYGO Statute?

MR. QUILICHINI PAZ: Yes. Yes, Your Honor, that is the PAYGO Statute, which specifically states in Article 7.6, that it does away -- one of the things that Article 7.6 does is it does away with all the loans and any -- all the financing that the ERS was able to provide to their own

participants, but specifically states that all loans previously granted or in place of course shall be -- shall be carried out under the statute under which they were issued. In this case, that would be Law 196 of the year 2011.

Additionally, contrary to what the ERS also says in its objection at paragraph ten, the new law actually, in the translation, says that participants of the new defined contribution plan shall have, ergo, the property rights over the balances in their defined contribution accounts.

So at any rate, if you want to see it, I actually propose to the Court that under Law 196, this is a specific amount of money that was actually certified by the ERS as available for collateral. So it was earmarked and set aside. And it -- under the same statute, 196, it could only be used for payment of that loan. That's the specific statutory language that we address.

So that basically is our contention. The rest we have argued basically on the merits and in our writings.

THE COURT: Thank you, sir.

MR. QUILICHINI PAZ: Thank you.

MR. MARINI: Good morning, Your Honor.

THE COURT: Good morning.

MR. MARINI: Luis Marini of Marini, Pietrantoni & Muniz for AAFAF. I'm here with my colleague, Suzzanne Uhland, as well for AAFAF.

Your Honor, AAFAF filed an objection to Cooperativa's motion, and in our objection, we essentially assert two bases for the denial of the motion. One is that we submitted the motion should be denied as the movant has failed to establish cause.

In our motion, we go through the various *Sonnax* factors and why we understand that the *Sonnax* factors weigh in favor of denial of the motion. And we also assert that the motion is not the correct procedural vehicle to assert remedies that Cooperativa is presenting in the motion.

THE COURT: That's the declaratory judgment aspect of the motion.

MR. MARINI: Correct. Correct.

THE COURT: I would like to -- I need to understand what the plan design here is and what the nature of these accounts or interests was prior to PAYGO, in which Law 196 authorized the granting of the security interest and pursuant to which the security interest was granted. So if you could help me with that, that will help me understand in context better your *Sonnax* argument.

MR. MARINI: Sure. Well, Your Honor, let me first describe what we understand is the type of interest that Cooperativa has. They're trying to enforce reported claims against consumer borrowers that are apparently secured by individual retirement and pension benefits.

We understand what they have is at most an assignment of the rights of the consumer borrowers to ERS. And as part of such assignment, they are stepping into the shoes of the consumer borrowers to enforce their pension and retirement claim benefits against ERS.

We understand that as an assignee, they have no superior rights to claim pension and retirement benefits as a consumer borrower would have against ERS.

THE COURT: So I want to know what the consumer borrower has.

MR. MARINI: Sure.

THE COURT: Were there individual accounts made for the consumer borrowers to hold their employee contributions, as the bank appears to have believed or is arguing now, or is it an annuity? What is the benefit plan design that the consumer borrower would expect to get as a pensioner?

MR. MARINI: Right. Your Honor, as we detailed in our papers, no individual retirement accounts were established at ERS.

THE COURT: Is that because the plan didn't call for it or is that because the plan called for it but nobody did it?

MR. MARINI: Your Honor, if I may check with my co-counsel for a second?

THE COURT: Yes.

MR. MARINI: Your Honor, we need to confirm. It's possible that the statute required it, but it certainly -- there were no retirement accounts set up.

As we also assert in our papers, at this stage and once borrowers -- they make no ongoing contributions to ERS, and ERS assets are to be transferred to the Commonwealth as part of the PAYGO legislation. And any remaining assets that ERS has right now are in its general fund.

So, Your Honor, the rights that --

THE COURT: So what's being -- what's the difference between what is being or has been transferred to the Commonwealth and ERS' general funds? Were there some segregated funds that have been transferred to the Commonwealth or what?

MR. MARINI: No, Your Honor. I believe that the intent of the PAYGO legislation was that the assets are transferred to the Commonwealth, which is ongoing. They are not segregated into individual accounts. The assets that ERS has are held in its general fund and they are not segregated.

THE COURT: And so was it part of whatever ERS had as its general fund that went to the Commonwealth but ERS has kept some back, or were there separate bodies of assets that were transferred to the Commonwealth?

MR. MARINI: I understand that part of ERS assets

were transferred without segregation and that the assets that ERS still has are just held in the general fund without segregation into individual borrower accounts.

So, Your Honor, our main contention here is that the rights or claims that pension claimants would have, they are not limited to Cooperativa's rights as an assignee. It is a legal issue that should be decided as part of the Title III proceedings, as part of a Plan of Adjustment or the claims resolution proceedings. Lifting the stay would shift that decision to a state court.

We understand that the Cooperativa is not the only potential claimant asserting a right or claim against pension benefits, and that that decision and that the claims that may be asserted or the rights that may be asserted by pension claimants should be made as part of the Plan of Adjustment or claim resolution process in this Court. And that the stay should not be lifted for those reasons and those that we put in our objection.

THE COURT: Is there anything of an evidentiary nature in the record on this motion to establish as the basis of a Court finding that there's only an unsecured claim here, that there are no individual accounts, that there are no segregated assigned funds?

There is a footnote in the brief that says, by the way, there are no individual accounts, but there's no

affidavit. There's no information about that. Are you prepared to proffer something?

MR. MARINI: May I have a second, Your Honor?

THE COURT: Yes.

MR. MARINI: Your Honor, we made the allegation in our objection. What we submit is that the Court -- we would ask the Court allows us to supplement the record with an affidavit.

THE COURT: Yes, I will require a supplemental affidavit, because arguments of counsel are not evidence. And you are asking me to make a factual finding that because of this factual situation, there is only an unsecured claim to be pursued, and on that basis, to apply the *Sonnax* factors.

And so that supplemental affidavit must be filed by a week from tomorrow. Sorry. Today is Wednesday. I lose track of the days, so --

COURTROOM DEPUTY: The 15th.

THE COURT: The 15th.

MR. MARINI: Thank you, Your Honor.

THE COURT: And let me ask you, is there -- to the extent that the plan required segregation and it didn't happen, is there an investigation ongoing? Will there be identification of how this happened and who was responsible and steps taken to pursue that?

I don't think that was something covered by the Kobre

& Kim matter, which focused on bonds.

MR. MARINI: Your Honor, I don't have the answer to that. I'll certainly check with my client and inform the Court.

THE COURT: Yes, please. File an informative motion.

MR. MARINI: (Nodding head up and down.)

THE COURT: Thank you.

MR. MARINI: Thank you, Your Honor.

THE COURT: Mr. Quilichini, any reply remarks?

MR. QUILICHINI: Just, Your Honor, that again, restating, the law is clear. The documents are clear. And we have to overstate the importance of the Exhibits B and C attached to our motions. These were drafted by the ERS. They're not of our doing. They were drafted pursuant to Law 196. So they cannot undo themselves of what they went into and what they represented to these credit unions.

These were segregated funds. If they were transferred illegally or unauthorizedly, that's another matter.

So I would ask you if we can respond to the informative motion that has been allowed to the -- to the other party on due time.

THE COURT: Yes. So within a week after the filing of the informative motion, you may make a further response.

MR. QUILICHINI: Thank you.

THE COURT: And I will hold this matter under advisement and in abeyance until these submissions are received, and then I will make a decision after all of the supplemental submissions have been received.

MR. QUILICHINI: Thank you, Your Honor.

THE COURT: Thank you.

Mr. Despins.

MR. DESPINS: Luc Despins for the Committee.

As you know, the Committee has stayed out of all these automatic stay motions for cost reasons. The only thing that concerns me is that I want to make sure Your Honor knows, and we're not taking a position on the merits of this, that this issue of a law saying that certain funds shall be deposited in a certain way or kept in a certain way, that's an issue that permeates the entire case.

So when I hear this argument over a relatively small matter, it gives me a lot of trepidation because I want to make sure Your Honor knows that that issue is in the case generally. So I -- that's all I wanted to make sure Your Honor was aware of.

THE COURT: It doesn't surprise me that it is a pervasive issue, but when I am asked to make a determination based on what is, in effect, an offhand remark in a brief that what was called for doesn't exist so we should just move on from there, that's a problem. I can't condone it and I can't

make a decision on that basis.

MR. DESPINS: Understood. I was not arguing that you should. I just wanted to make sure that you knew that various other statutes --

THE COURT: Yes.

MR. DESPINS: -- speak in those terms.

THE COURT: And I will expect that the parties, and in particular the governmental side parties will address appropriately and with an appropriate level of insight and detail the facts that relate to those sorts of issues as and when they come up in litigation.

Now, I didn't give a deadline for the informative motion. I only gave a specific deadline for the supplemental affidavit. So both the supplemental affidavit and the informative motion are due on the 15th of November.

I think we have concluded the scheduled agenda. We have adjourned matters as listed in document 4180 that are adjourned to the December Omni.

Are there any further remarks that anyone needs or wishes to make before I conclude the proceedings?

Seeing none, I will say today's agenda is concluded. The next scheduled hearing date is the November 20th, 2018, hearing on the proposed COFINA disclosure statement. That will take place in New York with a video connection to San Juan.

The next Omnibus hearing date is on December 19, 2018, here in Puerto Rico, with the usual video connection to New York.

I would like to thank all counsel for their work here today, and in particular to thank the staff of the courts in Puerto Rico and New York, and the ongoing work of the staff in Boston in preparing for and conducting these hearings.

I wish safe travels to all who are departing. And I commend again the administration of these cases on the court side and the way in which everyone is working together to move forward for the benefit of Puerto Rico. Keep well. We are adjourned.

(At 11:24 AM, proceedings concluded.)

* * *

U.S. DISTRICT COURT)

DISTRICT OF PUERTO RICO)

I certify that this transcript consisting of 66 pages is a true and accurate transcription to the best of my ability of the proceedings in this case before the Honorable United States District Court Judge Laura Taylor Swain on November 7, 2018.

S/ Amy Walker

Amy Walker, CSR 3799

Official Court Reporter

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